



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Preliminary Issues

The tenant advised me there was an error in the spelling of her first name. The parties did not raise any objections to the error being corrected and this has now been amended.

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 13, 2011. Mail receipt numbers were provided by the landlord. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on July 01, 2010. Rent for this unit is \$875.00 per month plus \$15.00 for laundry. Rent is due on the first of each month. The tenant paid a security deposit of \$437.50 on July 01, 2010.

The landlord testifies that the tenant failed to pay rent for September, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on September 03, 2011. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent of \$875.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 16, 2011. The tenant did not pay the outstanding rent, laundry fees and a late fee until September 26, 2011 and this was accepted by the landlord for use and occupancy only. The tenant also failed to dispute the Notice within five days. Since that time the tenant has failed to pay rent for October, 2011. The total amount of outstanding rent is now \$875.00 plus \$15.00 for laundry fees.

The landlord has applied to retain the tenants' security deposit of \$437.50 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible and seeks to recover her \$50.00 filing fee from the tenant.

The tenant does not dispute that she owed rent for September, 2011 and failed to pay this within the five allowable days. The tenant also does not dispute that she has failed to pay rent or laundry fees for October, 2011.

Analysis

I find the tenant failed to pay rent on time for September, 2011. When she did pay the rent on September, 26, 2011 this was accepted for use and occupancy and did not reinstate the tenancy. I find that the tenant also failed to pay rent or laundry fees for October and the landlord is therefore entitled to recover the sum of \$890.00 for October, 2011. Consequently the landlord is entitled to a Monetary Order to recover these arrears to the total sum of **\$890.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$437.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent and laundry fees	\$890.00
Less Security Deposit	(-\$437.50)
Plus filing fee	\$50.00
Total amount due to the landlords	\$502.50

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$502.50**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 11, 2011.

Residential Tenancy Branch